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No. 470

# In the Supreme Court of the United States

OCTOBER TERM, 1932

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLANTS

*v.*

THE NORTHERN PACIFIC RAILWAY COMPANY, ET AL., APPELLEES

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, THIRD DIVISION*

## BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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### OPINION BELOW

The opinion of the specially constituted District Court (R. 273) is reported in 60 F. (2d) 302. The decision of the Interstate Commerce Commission (R. 120) is reported in 179 I. C. C. 435.

### JURISDICTION

The final decree of the District Court was entered August 5, 1932. (R. 287.) Petition for ap-

peal was filed September 17, 1932, and was allowed September 17, 1932. (R. 297, 298.) The jurisdiction of this court rests on the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C. Title 28, Sec. 47), as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C. Title 28, Sec. 345).

## QUESTION PRESENTED

Whether the Commission's order of December 1, 1931, requiring appellees to reduce their rates on petroleum and its products from points of origin in the Midcontinent Oil Field (Texas, Oklahoma, Kansas, and Missouri) to designated destinations in North Dakota and in northwestern Minnesota, is void because of the denial by the Commission of the carriers' petition for rehearing to show changed economic conditions.

## STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 40–43.

## STATEMENT

### Proceedings Before the Commission

This is an appeal from a final decree of the District Court of Minnesota, Third Division, setting aside the Commission's order of December 1, 1931, entered by it in a proceeding then pending before it entitled Docket 17304, *International Oil Co. et al.* v. *Abilene & S. Ry. Co. et al.* (embracing also

Docket 21737, *Dacotah Oil Co. et al.* v. *T., T. & S. Fe Ry. Co.*), 179 I. C. C. 435 (R. 120), prescribing reduced rates on petroleum and its products from producing points in Missouri, Kansas, Oklahoma, Texas, and Arkansas, to destinations in North Dakota and in Minnesota north and west of the line of the Great Northern Railway from Duluth, Minn., to Pipestone, Minn., designated as northwestern Minnesota (R. 121). The carriers attacked the order on numerous grounds (R. 13–18), all of which, with one exception, were overruled by the District Court (R. 273–287). That Court annulled the order "solely because of the Commission's denial of the petition to reopen on the ground of changed conditions." (R. 295.) To determine whether this holding is correct, a summary of the situation confronting the Commission is necessary.

Large quantities of petroleum and its products are shipped from the Midcontinent Oil field [1] into Western Trunk Line Territory.[2] For rate-making purposes, the Midcontinent field, which contains 345 refineries (R. 2, 25), has been divided into groups, all points within each group usually being accorded the same rates (R. 22). The base group is Group 3, extending across Oklahoma and now

[1] Comprising the States of Missouri, Kansas, Oklahoma, and Texas, and portions of the States of Louisiana and Arkansas. (R. 2.)

[2] Comprising the States of Illinois, Iowa, Nebraska, Wisconsin, Minnesota, North Dakota, and South Dakota. (R. 2.)

embracing all shipping points in that State, except Devol, which is in the extreme southwestern portion of the shipping area. (R. 3, 22.) The rates from the other groups have, for many years, been related to the Group 3 rates. (R. 3, 122.) Questions relating to the reasonableness of the rates from the Midcontinent field, the propriety of the groups, and the relationship of the rates from that field compared with other fields have been before the Commission many times. The first important case in which rates on petroleum and its products between points in the Midcontinent field and Western Trunk Line Territory were considered was *Midcontinent Oil Rates*, decided August 13, 1915, 36 I. C. C. 109. (R. 22–23.) In that case the Commission fixed reasonable rates on those commodities from Kansas and Oklahoma to Kansas City, St. Louis, and various other points. On May 10, 1926, the Commission decided *Midcontinent Oil Rates, 1925*, 112 I. C. C. 421 (R. 19), bringing in issue the lawfulness under sections 1, 2, and 3 of the Act of the rates on petroleum products, in carloads, from points in Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas, to points in Western Trunk Line Territory and in Illinois, Indiana, and the upper peninsula of Michigan (R. 22). Therein, the Commission pointed out that "the primary issue is that of proper origin relationships" (R. 22), and that the interested carriers insisted that because the "origin groups as they existed in 1915 have

been extended beyond reasonable limits " (R. 44), the " present rate adjustment accordingly is badly out of alignment and requires recasting" (R. 44). The Commission said that " it would be difficult to suggest any group arrangement in this territory having a semblance of logic " that would not affect in some way the interested parties. (R. 39.) Concerning the rates to various points, including rates to North Dakota and Minnesota, the destination territory involved herein, the Commission found such rates to be " relatively higher than those to the remainder of western trunk line territory " (R. 43), but held the record open for future consideration of those rates (R. 44). In this decision it was shown that "North Dakota obtains about one-half of its gasoline from the Southwest, because the output of the nearer Montana refineries is not sufficient to supply the demand." (R. 44.) The Commission, by its 1926 order, fixed rates to certain representative destination points (shown in Appendix 5 to the report, R. 74) and admonished the carriers to adjust the rates to other destinations in proper relationship thereto (R. 67).

Before the decision of May 10, 1926, in the *Mid-continent Oil Rates, 1925, case* (R. 19), certain distributors of petroleum products, on July 15, 1925, filed a complaint attacking the reasonableness of the rates on those commodities from Texas, Oklahoma, Kansas, and Missouri, to designated destinations in North Dakota and in northwest-

ern Minnesota, hereinbefore shown to be that part of Minnesota north and west of the line of the Great Northern from Duluth to Pipestone, Minn. (R. 76). This complaint was entitled Docket 17304, *International Oil Company et al.* v. *A. & S. Ry. Co., et al.* (R. 75, footnote; R. 120), and the proceeding was consolidated and heard with other cases (R. 75–76), involving related issues. These consolidated proceedings resulted in the Commission's decision of March 5, 1928, entitled *Mid-continent Oil Rates, 1925,* 139 I. C. C. 605. (R. 75.) In that opinion the Commission discussed the rates involved in this appeal, namely, those from the Midcontinent field to North Dakota and northwestern Minnesota, at pages 613–616 of that report. (R. 83–85.) There the Commission showed that the rates from the Midcontinent field to North Dakota and northwestern Minnesota are published as joint rates and are made by adding to the commodity rates to the border points of Sioux City or Willmar, Granite Falls, Paynesville, or St. Cloud, Minn., full fifth-class rates beyond and deducting from the amounts so obtained 5.5 cents per 100 pounds. (R. 83.) An appendix to that decision shows the rates and earnings from Group 3 to representative destinations, the most typical of which are considered to be Fergus Falls, Morris, and Wadena, Minn., and Fargo, Bismarck, Minot, Devils Lake, and Grand Forks, N. Dak. (R. 87.) The following excerpts from the report, based on evidence

of record, tend to show the unreasonable character of the assailed rates:

Rates on refined oils from Tulsa to 11 points in western trunk-line territory situated on or east of the Missouri River, are shown to average 44 per cent of the fifth-class rates, whereas the rate on refined oils from Tulsa to Fargo, N. Dak., is 59.3 per cent of the fifth-class rate. Complainants compare rates on refined oils from Group 3 to North Dakota and Minnesota with rates on refined oils from Wyoming to Sioux City, St. Paul, and Chicago, and points grouped therewith; also with proportional rates from Wyoming to North Dakota and Minnesota points applicable on shipments to Canada. Competitive influences which have affected the rates from Wyoming have already been mentioned in connection with rates from Wyoming to South Dakota.

Comparisons of record show that the rates on refined oils from Group 3 to points in North Dakota and Minnesota bear a higher percentage relation to the rate on refined oils from Group 3 to the Twin Cities than rates on cement from Ada, Okla., to the same destinations bear to the rate on cement from Ada to the Twin Cities. Rates on refined oil from Group 3 to the North Dakota destinations average 195.1 per cent, and to the Minnesota destinations 155.2 per cent of the old rate of 43 cents to the Twin Cities, whereas the rates on cement to the North Dakota destinations average 168.1 per cent

> and to the Minnesota destinations 138.5 per cent of the rate of 26 cents to the Twin Cities. The basis upon which the rates on cement from Ada appear to have been established was approved in *Lehigh Portland Cement Co.* v. *Director General,* 61 I. C. C. 613. That basis has been changed somewhat by *Lehigh Portland Cement Co.* v. *B. F. & I. F. Ry. Co.,* 132 I. C. C. 3.
>
> Exhibits of record show that while the ton-mile earnings accruing to certain of the North Dakota lines under the rates on a number of selected commodities do not differ materially from the average of the corresponding earnings of 27 western roads, the ton-mile earnings under the rates of the same North Dakota carriers on refined petroleum oil and its products are materially in excess of the average earnings received by the 27 roads on the same commodities. (R. 83–84.)

The carriers in that case strongly urged that no reduction in the rates from the Midcontinent field to North Dakota and Minnesota should be made because the rates from Wyoming and Montana to these States are made with relation to the rates from Group 3 and that any reduction in the rates from Group 3 will necessitate corresponding reductions from Wyoming and Montana. (R. 84.)

The findings of the Commisison, so far as here material, were that the rates assailed were, and for the future would be, unreasonable and unduly prejudicial to the extent they exceeded the rates pre-

scribed in appendices to the report. (R. 85.) The rates prescribed as reasonable were to representative destinations, the carriers being admonished to adjust rates to other destinations in proper relationship thereto. (R. 86.) These rates became effective on June 14, 1928. (R. 110, 112.)

The following table (R. 87) sufficiently illustrates the reductions in rates required by this decision from Group 3 to representative destinations, together with the earnings under the old and new rates:

| From Group 3 to— | Distance | Present rate | Ton-mile earnings | Rate prescribed | Ton-mile earnings |
|---|---|---|---|---|---|
| | *Miles* | *Cents* | *Mills* | *Cents* | *Mills* |
| Morris, Minn | 886 | 58 | 13.09 | 54 | 12.19 |
| Fergus Falls, Minn | 981 | 64 | 13.05 | 61 | 12.44 |
| Wadena, Minn | 972 | 62.5 | 12.86 | 62.5 | 12.86 |
| Fargo, N. Dak | 990 | 70 | 14.14 | 62 | 12.53 |
| Grand Forks, N. Dak | 1,068 | 75.5 | 14.14 | 70 | 13.11 |
| Devils Lake, N. Dak | 1,125 | 83.5 | 14.84 | 74 | 13.16 |
| Minot, N. Dak | 1,215 | 92 | 15.14 | 81 | 13.33 |
| Bismarck, N. Dak | 1,260 | 94.5 | 15.00 | 82 | 13.02 |

In considering these reductions, the court will bear in mind that they apply to all carriers participating in the haul from origin to destination; only the delivering carriers are, however, contesting the reductions in this case.

Contending that the rates thus becoming effective on June 14, 1928, would result in a shift of tonnage from the Wyoming oil fields to the Midcontinent field, and in an effort, so they alleged, to restore the rate relationship existing prior to the March 5, 1928, decision (R. 113), the carriers, in-

cluding appellees, filed tariffs proposing reduced rates on petroleum and its products from Wyoming points, including Casper, the center of production, to destinations in North and South Dakota, Minnesota, Iowa, Nebraska, and Montana (R. 111). These schedules were suspended, hearings had, and the proposed reduced rates found not justified in I. & S. Docket No. 3148, *Petroleum and its Products from Points in Wyoming,* 153 I. C. C. 363. (R. 111.) The proposed reductions averaged 6½ cents per 100 pounds (R. 112), and were shown by the Commission as very low rates (R. 114.) Significantly, the Commission found that, based upon the present movement from the Wyoming field, the proposed reductions would decrease the freight revenues of the Chicago & North Western alone more than $350,000 per annum. (R. 115.) And the North Western is a party to this case, seeking to annul a Commission order condemning unreasonable and unjustly discriminatory rates on the ground it will suffer irreparable injury if required to stand a rate reduction. (R. 18.) After pointing out that the destination carriers, including appellees, are the same whether the traffic moves from the Midcontinent or from the Wyoming fields (R. 113), and after finding that no shift of tonnage followed the reduction in rates effective June 14, 1928 (R. 114), and that there would be no shift now (R. 115), the Commission's ultimate finding was that the rates proposed were not less than reasonable rates, but,

as they would prefer Wyoming shippers over Midcontinent shippers, they were ordered cancelled. (R. 116).

Following the Commission's decision of March 5, 1928, in *Midcontinent Oil Rates, 1925* (139 I. C. C. 605) (R. 75), which it will be recalled embraced No. 17304, the *International Oil Case,* involved in this appeal, considerable dissatisfaction arose. The complainants in No. 17304 alleged that the Commission's method of prescribing rates to "key-point" destinations, with an admonition to the carriers to adjust rates to other points in proper relationship thereto, was objectionable because the carriers had improperly graded the rates. (R. 124.) In this connection, complainants showed that "although some reductions were made in purported compliance" with the Commission's finding in the earlier report, the "rates to 106 of the 836 destinations here considered were increased." (R. 124.) Considering these and other objections, which are set out in its report (R. 120), the Commission on June 10, 1929, reopened the *International Oil Case,* and consolidated with it a complaint entitled Docket 21737, *Dacotah Oil Company et al.* v. *A., T. & S. Fe Ry. Co. et al.,* involving the unreasonableness of the rates on petroleum from the Midcontinent field to destinations in North Dakota (R. 121). Further hearings were had, which concluded on January 15, 1930 (R. 15), the case was orally argued before the Commission on October 9, 1930, and decided Decem-

ber 1, 1931, 179 I. C. C. 435 (R. 120). The order of December 1, 1931, is the one directly involved in this appeal. (R. 1, 144.)

The accompanying report of December 1, 1931 (R. 120), reviewed briefly the Commission's holdings in the 1915 *Midcontinent Oil Rates* (R. 122), and in the *Midcontinent Case of 1925* (R. 122). Therein the Commission showed how the traffic moved from the Midcontinent origin territory to the territory here involved. On this, it said:

> Kansas City is the gateway for the oil traffic from the Southwest to the destinations here considered. Beyond that point the principal routes which move the bulk of the traffic are through St. Paul; but except to relatively few points in eastern Minnesota, the shortest routes, many of which are open routes, are through Aberdeen or Willmar. To most points in North Dakota west of and including Devils Lake and Jamestown and to some points east thereof the shortest routes are over the Chicago, Milwaukee, St. Paul & Pacific through Sioux City and Aberdeen to Edgeley, N. Dak., where that carrier connects with the Midland Continental, which in turn connects with the Northern Pacific at Jamestown and the Minneapolis, St. Paul & Sault Ste. Marie at Wimbledon, N. Dak. To eastern North Dakota and western Minnesota the shortest routes are generally through Sioux City and over the line of the Great Northern above described through Willmar or the junctions

> with the other northern carriers. The short routes are also the tariff routes to many destinations. (R. 123.)

In that opinion the Commission set out a number of contentions of the shippers as to why the decision in the *Midcontinent Oil Rates Case, 1925,* was unsatisfactory from their standpoint, including the claim that the rates prescribed in that decision (effective June 14, 1928) " were and are unjustifiably high, particularly as compared with the rates prescribed from the same origins to points in South Dakota and to St. Paul, Paynesville, St. Cloud, Willmar, and Granite Falls, Minn., the gateways immediately adjoining the destination territory via which the traffic moves." (R. 123.) It was also pointed out in the report of December 1, 1931, that " the relationship of the origin groups is not attacked and complainants and interveners object to any disturbance of that relationship in this proceeding." (R. 123.) Situations showing lack of proper gradation in the rates were instanced (R. 124), and evidence briefly summarized tending to show the unreasonableness of the rates (R. 124–125). Concerning the shippers' testimony, the report reads:

> Complainants show that the rates assailed yield earnings per car-mile which are in some instances 50 per cent higher than those under the rates to Duluth, Willmar, and St. Paul and that they are also much higher than the rates for comparable distances

from points in midcontinent Group 3, Casper, and other points to destinations in other portions of western trunk-line territory. For example the rate from Group 3 to Wausau, Wis., is 46 cents as compared with a rate of 62 cents prescribed to Fargo and rates of 65 cents to Detroit Lakes, Minn., and 79.5 cents to Linton, N. Dak.

The rates assailed are also compared with rates which would result under various bases of readjustment. Some of these were considered in the former report. Those here submitted are determined generally by the present rate to Willmar or other gateway through which the shortest possible distance is computed, plus the spread in the fifth-class rates under the southwestern or Fargo scale for the distances beyond the gateway, or by applying to the southwestern scale of class rates the average percentage relationship which the rates prescribed in the original report to 17 cities on and east of the Missouri River and south of the destination territory here considered bear to the same class rates. Aside from the fact that refined oils are rated fifth class in western classification and that rates to the destination territory were formerly made by combination, using the full fifth-class local rates as factors beyond the gateways, the use of the spreads in the fifth-class rates has little support of record. (R. 124–125.)

The carriers' testimony in defense of their rates was then set out (R. 125–126), and the following

excerpt from the report shows the wide range the evidence took:

> Complainants and defendants introduced exhibits showing relative traffic density and other statistical data bearing upon transportation conditions in the territory between Kansas City and St. Paul through which the traffic generally moves, in the destination territory here considered, and in South Dakota. Complainants contend that their comparisons fully sustain the reasonableness of the rates which they seek, both for the future and for the past, and that they justify a level of rates in western North Dakota no higher than in the eastern portion of that State. Defendants stress the operating difficulties encountered by the northern lines during the winter months and the character of the service which they render in the distribution of the traffic. In the latter connection the Northern Pacific shows that of 2,465 cars delivered by it in the first eight months of 1929, 45 per cent were destined to branch-line points. On the other hand, by far the heaviest movement takes place in the summer and early fall months, and the lines performing the service to the Twin Cities handle the traffic in train loads to that point. (R. 126.)

Following this, under the heading "Rates for the Future," the Commission said:

> The record on further hearing demonstrates the necessity of a further revision of the rates assailed to bring about a reasonable

> and consistent adjustment. The present rates grade up too rapidly beyond the gateways on the eastern border of the destination territory and as the State line is crossed from South Dakota into North Dakota; the key-point rates have frequently been blanketed back for long distances, resulting in abrupt jumps in the rates between adjoining stations; there are numerous fourth-section departures and other inconsistencies such as higher rates to Jamestown and Bismarck than to Devils Lake and Minot, N. Dak.; the rates to North Dakota especially are on too high a level compared with the rates prescribed to South Dakota; and those from Kansas City to North Dakota are generally higher than the Wyoming-Montana scale recently prescribed in *Rates on Petroleum and its Products in Montana*, 176 I. C. C. 707. (R. 126.)

The report shows that, because of the effect on the carriers' revenues, and for other reasons therein detailed, the Commission concluded it would not be warranted in requiring an extension of the level of the rates at the gateways (Sioux City, Sioux Falls, and St. Paul) throughout this destination territory. (R. 127.) On this point the report reads:

> The record indicates that the rates to the gateways were made with relation to those to points farther east such as Chicago, Ill., which are affected by competitive conditions which do not exist in the destination territory under consideration. Under these cir-

> cumstances and considering the effect on carriers' revenues, we would not be warranted in requiring an extension of the level of rates at the gateways throughout this destination territory. Moreover, it is apparent that the application of any uniform percentage of class rates to this traffic would have one or more of the following results: (1) Increases in the rates to the gateways and points east thereof which were prescribed in the Mid-continent case of 1925 and are not here in issue; (2) a very abrupt rise in the rates to points immediately beyond the gateways; and (3) drastic reductions to points not only throughout this destination territory but also in South Dakota and perhaps Nebraska. (R. 127.)

In finding that the situation called for prescription by it of specific rates to 836 destinations involved and in showing how these rates harmonize with rates prescribed by it in other territory, the Commission said:

> We are forced to the conclusion that the situation requires the prescription of specific rates without any special relation to the class rates. Appendix B hereto shows the rates from Group 3 to the 836 destinations involved, the distances over the shortest workable routes as shown in complainants' exhibits, the first-class rates for like distances under the southwestern scale, and the percentage relation of the petroleum rates to such class rates. The southwestern scale is

used simply as a convenient yardstick and not on the assumption that it would be proper for application to all points in the destination territory. This appendix also shows the rates proposed by the examiner and those herein prescribed for the future. It will be observed that the latter are graded upward from the gateways and gradually become a larger percentage of the first-class rates under the southwestern scale. The proposed rate from Group 3 to Fargo is 22.5 per cent, which is the same as the average under the rates prescribed to points in eastern South Dakota; that proposed to Jamestown, 980 miles, is 25 per cent and the same as that previously prescribed to Mobridge, S. Dak., 974 miles; and that proposed to Bismarck, 1,055 miles, is 26.5 per cent and the same as that previously prescribed to Lemmon, S. Dak., 1,073 miles. These rates will not only be in harmony with those previously prescribed to South Dakota, but considering the respective territories through which the traffic moves, also in line with those recently prescribed from Wyoming points to Montana points in *Rates on Petroleum and its Products in Montana, supra.*

In prescribing these rates we have taken into consideration the shortest possible routes, including that through Ellendale and Edgeley, N. Dak., as well as the routes over which the bulk of the traffic moves via the Twin Cities. The adjustment is intended to eliminate fourth-section departures over all

reasonable and customary routes, but if fourth-section relief is necessary applications therefor will be given consideration on their merits. (R. 127–128.)

The following table, using the same destinations as considered representative heretofore, shows the reductions resulting from the Commission's order herein:

| From Group 3 to— | Short-route distance | Present rate | Rate prescribed | Reduction |
|---|---|---|---|---|
| | *Miles* | *Cents* | *Cents* | *Cents* |
| Morris, Minn. | 886 | 54 | 50 | 4 |
| Fergus Falls, Minn. | 968 | 61 | 55 | 6 |
| Wadena, Minn. | 961 | 62.5 | 55 | 7.5 |
| Fargo, N. Dak. | 990 | 62 | 57 | 5 |
| Grand Forks, N. Dak. | 1,068 | 70 | 63 | 7 |
| Devils Lake, N. Dak. | 1,118 | 74 | 70 | 4 |
| Minot, N. Dak. | 1,141 | 81 | 75 | 6 |
| Bismarck, N. Dak. | 1,055 | 82 | 70 | 12 |

It should be borne in mind that these reductions apply to the originating, intermediate, and delivering carriers "according as they participate in the transportation." (R. 145.) Presumably the originating and intermediate lines are satisfied with the order, as the suit below was brought by delivering carriers only. (R. 2.)

Generally speaking, the Commission denied reparation, save in "certain instances * * * where the carriers failed to comply with our instruction to revise the rates to other points in proper relationship with those prescribed to the key points." (R. 128.) The Commission's reason for denying reparation is stated as follows:

> * * * We have repeatedly held that as applied to past shipments the rates in effect prior to the readjustment of June 14, 1928, were not unreasonable to the extent they exceeded the rates established on that date pursuant to the Midcontinent case of 1925. See cases cited in *Legel Oil & Gas Co.* v. *Chicago & N. W. Ry. Co.*, 161 I. C. C. 599.
>
> The rates prescribed in our former report must be regarded as reasonable maxima from the time of their establishment to the effective date of the order to be issued in connection with this report. (R. 128.)

The report points out that the carriers "blanketed the key-point rates back so as to create larger destination groups than under the adjustment herein prescribed for the future, but it can not be said that the rates so established are clearly contrary to our previous findings except in the instances hereinbefore mentioned and indicated in column H of Appendix B." (R. 129.) The denial of reparation was sharply denounced by the shippers. (R. 233.) The ultimate finding of the Commission was:

> Upon the whole record now before us, we find that the rates assailed prior to June 14, 1928, were not unreasonable; that those applicable on and after that date until the effective date of our present order for the future were unreasonable only in the instances and to the extent they exceeded the rates shown from Group 3 in column H of Appendix B hereto, plus or minus the differentials from

> other origin groups applicable to Willmar and St. Paul, Minn.; and that on and after the effective date of our order for the future, the rates assailed will be unreasonable to the extent they exceed or may exceed those shown from Group 3 in column F of Appendix B, plus or minus said differentials from the other origin groups. Our previous findings are modified accordingly. (R. 129.)

By an order of the same date, December 1, 1931, the Commission required the reduced rates to, and they did, become effective March 15, 1932. (R. 145.) No review of this action was sought at the time, and it was not until February 3, 1932, that the appellees petitioned the Commission to reopen the case for further hearing on the ground that the order to become effective on March 15, 1932, was not representative of present conditions because based upon a record closed January 15, 1930. (R. 146.) In the meantime, this Court had rendered a decision, on January 4, 1932, in the case of *A., T. & S. Fe Ry. Co.* v. *United States,* 284 U. S. 248, annulling the Commission's order of July 1, 1930, in Docket 17000, Part VII, *Grain and Grain Products,* 164 I. C. C. 619, on the ground that the Commission had abused its administrative discretion in denying the carriers' petition for rehearing to show changed conditions between September, 1928, when the record before the Commission closed, and the date when the order was to become effective, April 1, 1931. The lower court said, speaking of the de-

cision in the *Grain Case* that "it is probably true that that decision induced them [the carriers] to file their application for a rehearing." (R. 286.) In the carriers' petition for rehearing it was averred that the Commission's order of December 1, 1931, would involve a revenue loss of $284,000 for appellees, and $600,000 for all carriers (R. 149); further, that such reductions in rates would precipitate demands for other reductions (R. 149). The carriers also pointed out that, despite the existing depression, they were transporting to destinations involved in the proceeding more carloads of refined petroleum traffic since the record was closed than theretofore. (R. 148–149.) On March 7, 1932, the Commission entered an order denying the carriers' petition to reopen (R. 17), and the rates went into effect on March 15, 1932 (R. 144).

**Proceedings in the District Court**

The petition seeking annulment of the Commission's order of December 1, 1931, was filed on April 1, 1932, by five carriers, the Northern Pacific, the Great Northern, the Milwaukee, the Chicago & North Western and the Soo Line. (R. 1, 2.) These are all delivering carriers; none of the originating or intermediate carrier defendants in the Commission proceedings, although quite numerous (R. 104), have joined in the suit. Undoubtedly, pipe-line competition played some part in this failure to join, as it was shown that pipe lines are now in operation from the Midcontinent field to Min-

nesota Transfer, Minn. (R. 245), and that the delivering carriers, appellees herein, would share in the traffic whether coming to the destination territory by rail or by pipe line (R. 245).

The petition alleged that the order was void on many grounds, which may be summarized as follows: (1) It has the effect of reducing rates previously declared reasonable by the Commission, not because such rates were unreasonable in and of themselves and based upon the service rendered, but to bring about harmonious relationships between such rates and rates not in issue to other destinations (R. 13); (2) the order is void because the Commission, in prescribing the reduced rates to North Dakota and northwestern Minnesota, to bring about "a reasonable and consistent adjustment," considered only the relationship of those rates not in issue from the Midcontinent field to South Dakota and to the gateways on the eastern border of the destination territory, and arbitrarily refused to consider the relationships between the rates in issue and the comparative rates from Casper, Wyo., on the ground that these relationships had not been brought into the case by complainants (R. 13–14); (3) the Commission went outside the record because it considered certain comparisons between the rates in issue here and rates prescribed by it on petroleum from Wyoming to Montana points in another proceeding after the record in this case was closed (R. 14–15); (4) in its conduct of the proceedings, the Commission acted

arbitrarily because it denied various petitions made by the carriers for consolidation and further hearing upon a single record of cases relating to the general level of the rates from the Midcontinent field to numerous destinations in Western Trunk Line Territory, other than the destination territory involved herein (R. 10–11); and (5), the order is void in that the Commission erred as a matter of law in denying, on March 7, 1932, the carrier's petition for rehearing of February 3, 1932, to show changed economic conditions (R. 18). The petition contained no allegations that the rates prescribed by the Commission were confiscatory, or that its order finding the existing rates unreasonable, was not supported by the evidence.

The petition concluded with an allegation of revenue losses of $600,000 annually to appellees and their connections (R. 18), $305,000 of which would be taken from appellees and the balance from their connections (R. 18). This allegation was denied by the Commission (R. 154) and by the Government (R. 252). Interventions in support of the order were allowed on behalf of the Northwest Petroleum Association (R. 253) and the Farmers Union Cooperative Oil Company (R. 255). Attached to the Commission's answer and made a part thereof are its two decisions in *The Fifteen Per Cent Case, 1931*, 178 I. C. C. 539 (R. 155); 179 I. C. C. 215 (R. 204); in the second of which, decided December 5, 1931, it authorized certain increases in rates, to ex-

pire March 31, 1933, including an increase of one cent per 100 pounds on crude petroleum, petroleum products n. o. s., and petroleum oils, refined, and all other gasoline (R. 228). Based on a car of petroleum weighing 52,800 pounds (R. 32), this emergency increase amounts to $5.28 per car. In aid of its application for an interlocutory injunction, appellees introduced affidavits of revenue losses totaling $365,000 for their lines. (R. 256–263.) In the District Court, interveners in support of the order introduced affidavits, the effect of which was to show that the farmer received the benefit of the lower rates, and that at that time [April, 932], his condition was such as not to permit the payment of the higher rates. (R. 267, 271.) An exhibit, attached to one of these affidavits, showed the financial condition of seven Western Trunk Line railroads, including the five appellees herein, for the nine years 1921 to 1929, inclusive. (R. 269.) All parties submitted the case on final hearing, and on July 19, 1932, the Court held the order invalid solely on the ground that the Commission erred as a matter of law in denying the carriers' petition for reopening to show changed economic conditions. (R. 286.) All other contentions as to invalidity of the order were overruled (R. 273–284), and the only question presented by appellants' assignment of errors is as to whether it was essential to due process of law, under the facts in this case, for the Commission to

have afforded the carriers an opportunity to show changes in economic conditions taking place between the date the record closed, January 15, 1930, and the effective date of the order, March 15, 1932 (R. 298). The appeal, it is believed, is properly here, all defendants and interveners below having joined therein (R. 303), and on November 14, 1932, this court noted probable jurisdiction. No stay pending the appeal was sought and the rates required by the order of December 1, 1931, are not now in effect because of the final decree. (R. 287.)

## ASSIGNMENT OF ERRORS TO BE URGED

The following errors of the District Court are urged herein:

1. In setting aside, annulling, and suspending the order of the Interstate Commerce Commission, entered December 1, 1931, in Docket No. 17304, *International Oil Company* v. *Abilene & Southern Railway Company et al.*, 179 I. C. C. 435, and in granting and issuing a permanent injunction enjoining the enforcement, execution, and operation of said order.

2. In finding and holding that the Commission abused its discretion in denying the petition for rehearing filed February 3, 1932. (R. 298.)

## SUMMARY OF THE ARGUMENT

The facts in this case are entirely different from the facts considered by this court in the case of *Atchison, Topeka & Santa Fe Ry. Co.* v. *United*

*States,* 284 U. S. 248, referred to herein as the *Grain case.* In that case this Court was not laying down a principle of law to be followed in all cases irrespective of the differences in circumstances and conditions; instead it was dealing with the particular facts in a specific situation.

There was no necessity for the Commission to grant a rehearing to show changed conditions occurring since the closing of the record, because at the time of its decision under review it had just concluded a nation-wide investigation into the condition of the carriers caused by the depression, as a result of which it had permitted increases for a limited period in certain selected commodities. (*Fifteen Per Cent Case, 1931* (R. 155, 204).)

## ARGUMENT

### The Commission did not err in denying the carriers' petition for rehearing filed February 3, 1932

The District Court concluded that the Commission's order was void because of this Court's decision in *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 284 U. S. 248, and this, despite the Court's finding that "the facts in this case and in that case are different." (R. 285.)

The carriers' petition for rehearing was filed on February 3, 1932, and is based primarily on the claim that conditions have changed since the further hearing, which closed January 15, 1930. (R. 146.) These changed conditions are claimed to be loss of traffic and revenues resulting from the eco-

nomic depression, beginning in the fall of 1929, and continuing, with steadily increasing severity, ever since. (R. 148.) The contention was made that the full effects of the depression had not become evident at the time of the further hearing (R. 148), and figures are given (R. 147–148) showing loss of traffic and revenue for 10 carriers serving Western trunk-line territory, including several weaker than appelles. Five only of these 10 carriers joined in this suit. Petitioners below made no claim that they are any worse off than other railroads throughout the country, or that they are suffering from the depression any more than industry in general, and the petroleum business in particular.

We contend that in the *Grain Rates Case*, 284 U. S. 248, this court was dealing with a specific case under facts essentially different from the facts here. The *Grain case* arose out of the Hoch-Smith Resolution (*Ann Arbor R. R.* v. *United States*, 281 U. S. 658) a "general investigation," and related to "rates on a major description of the traffic of the carriers in a vast territory" (p. 260). Practically all the carriers in the territory west of the Mississippi River, and including Illinois, and many carriers east thereof, joined in the suit to annul the order. The revenues of the carriers in the Western District from the carriage of grain and grain products amounted to 12.1 per cent of their total revenues, and the order in the *Grain case* had the effect of reducing the general level of rates on that traffic

13 per cent, or about $20,000,000, annually (p. 258). Under these circumstances, this Court held that a record closed in September, 1928, could not be regarded as representative of conditions existing in 1931, and that the Commission's action in refusing to grant a rehearing permitting the presentation of evidence relating to existing conditions, was a denial of right. In the opinion it was stated:

> * * * While the effects of the widespread economic disturbance have had a progressive manifestation, they had been sufficiently revealed in February, 1931, when the second petition for rehearing was made, to compel the conclusion that the record of 1928 afforded no sufficient basis for the order of the Commission. The facts were set forth in the carriers' petition. * * *. (*Id.* 261.)

On the other hand, the record in this case was closed January 15, 1930, after the depression began, and while it is undoubtedly true that at that time its full effects had not become evident, it is also true that the case was not finally submitted until the argument before the Commission on October 9, 1930. (R. 120.) Shortly thereafter, all the carriers in the United States filed an emergency application for a 15 per cent increase in freight rates, and because of its urgency, the application was given preferred consideration by the Commission. This occupied much of the summer and fall of 1931. (R. 155.) (See *Fifteen Per Cent Case, 1931,* 178

I. C. C. 539 (R. 155); 179 I. C. C. 215 (R. 204).) Considering this, can the court say it was an unusual length of time, in view of the many interrelated issues and varying relationships that had to be passed upon, for the Commission to take until December 1, 1931, to render its decision herein. However that may be, at no time between January 15, 1930, when the hearings closed, and December 1, 1931, the date of the decision (a period of almost two years), did the significance of changed conditions become apparent to appellees. Presumably, it was willing to take its chances upon a favorable Commission decision; failing that, the decision in the *Grain Rates case,* decided on January 4, 1932, advanced a new reason as to how the Commission's action might be defeated, for on February 3, 1932, a petition for rehearing, alleging changed conditions, was filed. (R. 17.)

Other facts distinguish this proceeding and the *Grain case.* This is not a general investigation pursuant to the Hoch-Smith Resolution, but a complaint and answer case involving the rates on a single commodity, petroleum and its products, moving in part only over the lines of appellees, and covering only a relatively small part of the destination territory served by them. The revenue differences are substantial, a $20,000,000 reduction was involved in the *Grain case,* and estimates of $305,000 as to appellees (R. 18), and $600,000 for appellees and other participating carriers not join-

ing in the suit, are involved here (R. 18). While in this connection the lower court appealingly suggests that it is logically impossible to see why the number of carriers, the extent of territory, the amount of carrier revenue affected, can furnish the solution to the question of whether the order was fair or unfair (R. 285), and that "a single carrier with a few miles of road, operating in a limited territory, is as much entitled to a fair hearing and fair treatment at the hands of the commission as a large group of carriers operating in any vast territory, and the law will certainly afford it the same protection" (R. 285), we do not believe that in its decision in the *Grain case,* this court was laying down a general principle of law to be followed regardless of the facts in the case. Furthermore, the amount of the revenue affected, whether $600,000 or $20,000,000, may make a very material difference as to whether an order is valid or invalid, when we consider the duty imposed upon the Commission by Section 15a (2) to adjust rates "so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management" earn, as nearly as may be, a fair return. We do not think that this court expected the Commission to reopen every case heard either in whole or in part before the full effects of the depression became evident. The Commission believed that a discretion was left in it as to what

cases should be reopened for the purpose of bringing the records down to date. In its 46th Annual Report to the Congress, dated December 1, 1932, the Commission reviewed the investigations undertaken by it in Docket 17000, *Rate Structure Investigation,* out of which its decision in the *Grain Rates Case* arose, and pointed out in that report (p. 30) that—

> * * * It has also been necessary, on account of changed conditions, to reopen certain of the proceedings to bring the records down to date.

Also, it would seem that had appellees really been desirous of calling the Commission's attention to changed conditions as affecting them, they could have done so sometime during the period from the date the record closed, January 15, 1930, and the date of the decision, December 1, 1931. It will not be contended that prior to the last-mentioned date the serious effects of the depression had not become apparent. As this court said in the *Grain case* (p. 261): "While the effects of the widespread economic disturbance have had a progressive manifestation, they had been sufficiently revealed in February, 1931, * * * to compel the conclusion that the record of 1928 afforded no sufficient basis for the order of the Commission." Then it is believed that the present case is "an ordinary application for rehearing" as cited by the court in its decision in the *Grain case* (p. 261). The distinguishing facts have been heretofore shown. It

is at least of significance that the carriers who participate in the traffic up to the gateway points where it is delivered to appellees, though their revenues are also affected, have not joined in the suit. For aught that appears, they must be considered to be satisfied with the rates. These originating and intermediate lines appreciate that with a pipe line now opened to Minnesota Transfer (R. 245), that fact has a part to play in fixing their rates. Appellees, on the other hand, are delivering lines who share in the traffic whether coming to their gateways by rail or pipe line.

Despite what we consider the distinction between the *Grain case* and this proceeding, was it, under the facts shown herein, necessary at all for the Commission to grant a rehearing to show changed conditions? The proceeding under review was decided on December 1, 1931, shortly after the Commission's first decision in the *Fifteen Per Cent Case,* October 16, 1931 (R. 155), and almost simultaneously with its supplemental report of December 5, 1931 (R. 204). An examination of the two reports therein (R. 155; R. 204) will show that the Commission was fully advised in regard to the condition of the carriers. Excerpts from these reports showing that the Commission was aware of changed conditions are contained in Paragraphs XXI and XXII of the petition (R. 15–16); in fact the petition itself states that the Commission acted with knowledge of, but in disregard of, the changed conditions aforesaid (R. 16); it is then alleged, in

Paragraph XXIII, that on February 3, 1932, the carriers filed an application for rehearing to show changed conditions, and that "the Commission had recognized said changed conditions in its report" in *Fifteen Per Cent Case, 1931* (R. 17). Under these facts, can it be said that there was any abuse of discretion on the part of the Commission in denying a petition for rehearing to show changed conditions of which the petition itself shows the Commission had knowledge? Because of the carriers' serious financial condition at that time, the Commission granted emergency rates on certain commodities best able to stand such increases, which could be exacted without at the same time transgressing the bounds of maximum reasonable rates. (R. 205.) In the *Fifteen Per Cent Case, 1931* (R. 204), the Commission permitted increases of 1 cent per 100 pounds on crude petroleum, refined petroleum oils, gasolines, etc. (R. 228). These increases are to expire March 31, 1933, in the absence of action duly taken by the Commission to the contrary. (R. 205.) These surcharges must be added to the rates prescribed by the order of December 1, 1931 (to become effective March 15, 1932).

In its findings of fact (R. 288–295) the lower court found from an affidavit introduced on behalf of the Northern Pacific Railway Company, in support of the petition, that the total revenues of the Northern Pacific declined from $77,000,000 in 1929, to $65,000,000 in 1930, and to $51,000,000 in 1931 (R. 294). This is a reduction of $26,000,000 in a

two-year period. We have no desire to question these figures, for, as the lower court found: "The general effect of the change in economic conditions upon the revenues of these and other carriers is a matter of common knowledge." (R. 294.) We do say, however, that in view of this drastic reduction in revenues, the Northern Pacific, which may be considered representative of other appellees, must look elsewhere for its salvation than the mere setting aside of this order, the revenue effects of which amount to a reduction to it of "more than $98,000.00 per annum" (R. 257) according to one affiant, and $136,000 per annum (R. 260), according to another.

Recognizing the emergency, the Commission to the best of its ability and in so far as it could lawfully do so, attempted to better the condition of the carriers by granting them permission to make general increases in the rates on selected commodities, which increases it believed could be made "without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates." (R. 205.)

This court has recognized the practical necessity of dealing with rates in the aggregate or by broad classes, protecting the rights of shippers and carriers with respect to individual rates by a saving clause which makes the general findings without prejudice to subsequent findings in individual situations. (*New England Divisions Case*, 261 U. S. 184, 197–198; *Railroad Commission of Wis-*

*consin* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, 579. Compare *Brimstone R. R. Co.* v. *United States*, 276 U. S. 104, 123.)

It is to be remembered that the reduced rates prescribed by the December 1, 1931, order have been enjoined, but the surcharges permitted by the Commission as a result of its comprehensive investigation in the *Fifteen Per Cent Case, 1931* (R. 155, R. 204) are being added to the theretofore existing higher rates. (Compare *Anchor Coal Co.* v. *United States*, 279 U. S. 812.) We submit that, while the Commission can not go to one record for facts in deciding another case (*United States* v. *Abilene & So. Ry. Co.*, 265 U. S. 274), it was never intended that the Commission should shut its eyes to conclusions reached by it in other cases, especially where, as here, the decisions are virtually contemporaneous.

Whether a petition for rehearing should be granted or denied does not depend on the evidence upon which the order sought to be set aside is based; it depends instead upon matters called to the Commission's attention by documents in the nature of affidavits, which relate to "outstanding contemporary facts." It is not based on evidence properly so-called; it enters rather into the realm of judicial notice. Of necessity, it is a matter discretionary in character. This discretion must be exercised by the Commission considering, weighing, and balancing the evidence introduced in the *Interna-*

*tional Oil Case,* against the general facts of which it may take judicial notice, including of course the facts and knowledge acquired by it from its investigation in the *Fifteen Per Cent Case.* The result of this weighing is the order granting or denying the petition for rehearing. It is believed these facts clearly differentiate the situation from that before this court in the *Grain case.*

In the carriers' petition for rehearing (R. 146–150), the denial of which has been found sufficient to invalidate the order (R. 295), figures are given showing that, unlike other traffic during the existing depression, the refined petroleum products traffic of appellees has increased; in 1931, the Great Northern delivered 19,408 cars of refined petroleum products at stations on its lines in Minnesota and North Dakota, as compared with 19,115 cars during the year 1930, and only 17,035 cars during the year 1929 (R. 148). It is there also shown that during the year 1930, the Northern Pacific delivered 6,147 cars of refined petroleum products moving from the midcontinent fields to stations on its lines in Minnesota and North Dakota, as compared with 5,328 cars during the year 1929 (R. 148); during the first seven months of 1931 the Northern Pacific delivered 3,800 cars of refined petroleum products moving from the midcontinent fields to these stations as compared with 3,523 during a corresponding period of 1930 (R. 148). The petition for rehearing further stated: "It is believed that a similar situa-

tion exists in the portions of the destination territory served by the Soo Line and Milwaukee Railroads, but the exact figures for these lines are not yet available." (R. 148–149.)

This shows that despite the unfavorable effect on carrier revenues by the decline of traffic generally, as far as petroleum and its products go, which are the commodities we are concerned with in this case, the traffic thereon has actually increased.

The present unfortunate plight of the railroads, under these circumstances, does not seem to be due to any falling off in the petroleum traffic but to the decline of traffic generally. The argument seems to be that because the petroleum traffic has not fallen off, but has on the contrary increased somewhat, the industry can well afford higher rates. In *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, this court held that while every shipper was entitled to a reasonable rate, the Commission could not reduce existing rates in order to protect the investment of the shipper or by reason of his supposed necessities. The same reasoning would seem to require a holding that the carriers may not insist on the maintenance of rates found to be unreasonable for the future by the Commission (R. 129), which finding upon the record as made was in no way modified by the lower court, in order to protect the investment of the carriers. We have already shown that

the Commission, as a matter of practical necessity, undertakes to deal with the general revenue needs of the carriers by passing on their rates in the aggregate or in broad classes, without considering the reasonableness of particular rates. In the *Fifteen Per Cent Case, 1931,* that was the method pursued by the Commission of affording relief to the carriers to the extent that such relief could be legally granted.

## CONCLUSION

It is respectfully submitted that the decree of the court below should be reversed with directions to dismiss the petition for want of equity.

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JANUARY, 1933.

## APPENDIX

The following provisions of the Interstate Commerce Act, as amended, are pertinent in this case:

Section 1 (5):

> All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful. * * *.

Section 3 (1):

> That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 15 (1):

> That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the

Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt

the classification and shall conform to and observe the regulation or practice so prescribed.

Section 15a (2) and (3):

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided,* That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation. * * *

Section 16 (a):

That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Comission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

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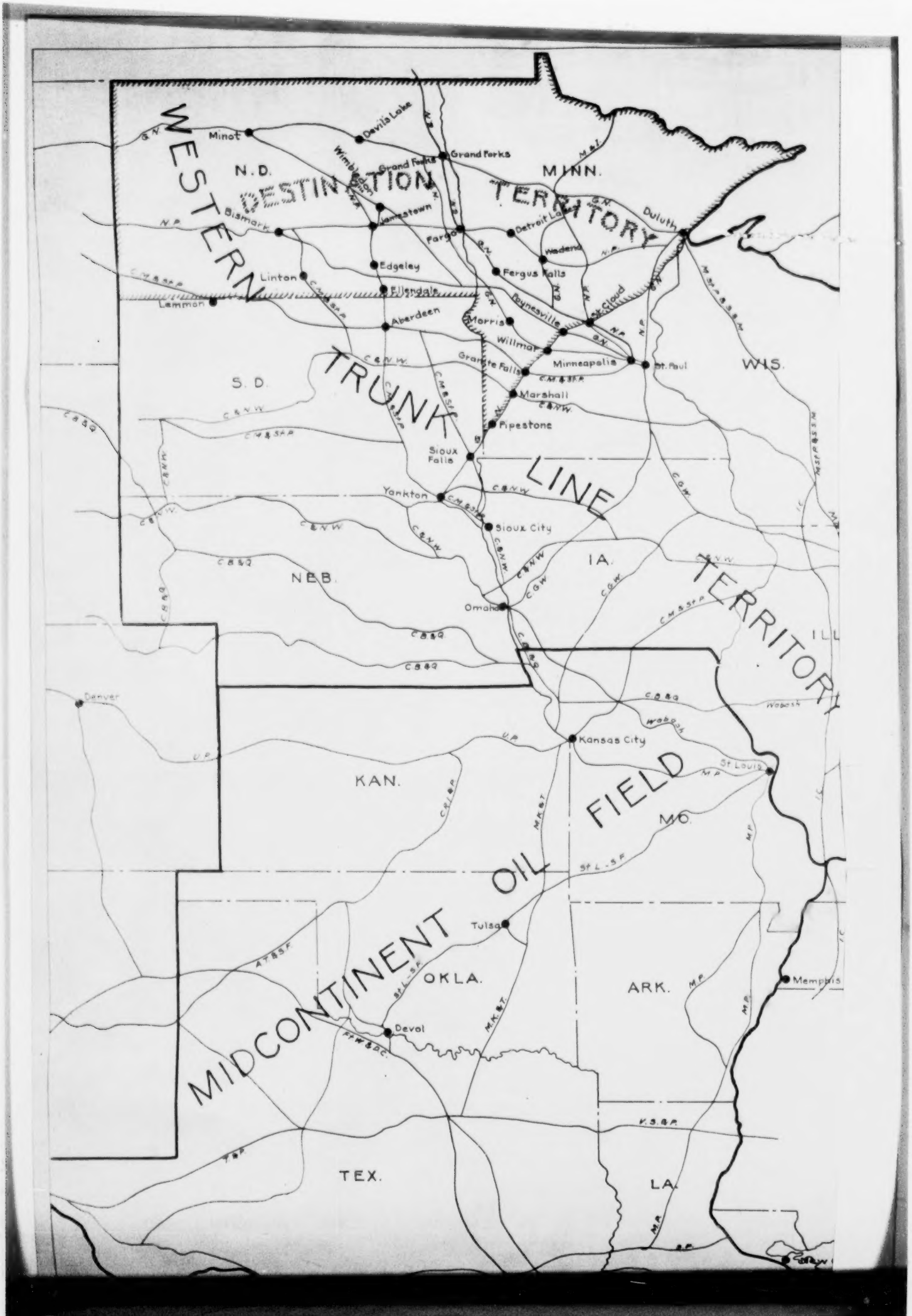
WESTERN DESTINATION TERRITORY
TRUNK LINE TERRITORY
MIDCONTINENT OIL FIELD
N.D.
MINN.
S.D.
WIS.
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KAN.
MO.
OKLA.
ARK.
TEX.
LA.
ILL.
Minot
Devils Lake
Grand Forks
Bismarck
Jamestown
Fargo
Detroit Lakes
Duluth
Wadena
Edgeley
Fergus Falls
Linton
Ellendale
Lemmon
Aberdeen
Morris
Willmar
Reynesville
St. Cloud
Minneapolis
St. Paul
Granite Falls
Marshall
Pipestone
Sioux Falls
Yankton
Sioux City
Omaha
Denver
Kansas City
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C.B.&Q.
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M.St.P.&S.S.M.
M.&St.L.
M.K.&T.
M.P.
St.L.-S.F.
A.T.&S.F.
T.&P.
K.C.S.R.
Wabash
U.P.
C.R.I.&P.
F.W.&D.C.